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RESEARCH REPORT

CONDITIONAL SENTENCING IN CANADA: AN OVERVIEW OF RESEARCH FINDINGS

RR2000-6e

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and
Carol LaPrairie

April, 2000

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The views expressed herein are solely those of the authors and do not necessarily reflect those of the Department of Justice Canada.

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Executive Summary

Conditional Sentence of Imprisonment

In 1996, Bill C-41 was proclaimed into force. This Bill represented the first major sentencing reform in Canada's history. The sentencing reforms introduced by that Bill included the creation of a new sanction: the conditional sentence of imprisonment. The conditional sentence of imprisonment is a term of imprisonment that is served in the community. If certain criteria are met, the court may order the offender to serve his sentence in the community rather than in a provincial correctional institution. The offender is obliged to comply with a number of compulsory conditions, and optional conditions crafted for the specific offender may also be imposed. If any of the conditions are violated, the offender may be ordered to serve the balance of the term in custody. The purpose underlying the conditional sentence was to reduce, in a safe and principled way, the number of offenders committed to custody.

Purpose of Report

This report summarizes some of the research that has been conducted on conditional sentencing over the period 1996-2000. This research includes an analysis of usage patterns with respect to the new sanction, public attitudes towards conditional sentencing, and a survey of judges. The research summarized here was conducted before the Supreme Court judgement in Proulx, (January 2000) which provides trial judges with guidance as to the use of the conditional sentence of imprisonment.

Survey of Judges

A mail survey was conducted of judges across Canada. The final sample included 461 respondents, which represents a response rate of approximately one-third. The survey generated the following findings:

- there was considerable variation in the use of conditional sentences across the country;
- judges identified "reducing the use of imprisonment" as the most important objective of conditional sentencing, although almost as many respondents cited "responding to the offender's needs".
- Property crimes were seen as the offence for which a conditional sentence was most appropriate;
- A conditional sentence was seen as being as effective as custody in achieving rehabilitation but not deterrence or denunciation;
- One-third of the respondents perceived a conditional sentence to have the same impact as a probation order;
- Judges stated that they would impose more conditional sentences if there were more support resources;
- Treatment and no-contact orders were the most frequently-imposed sanctions;
- Most judges thought that incarceration is the appropriate response to a breach of

conditions;

- Most judges believed that the conditional sentence had reduced the number of admissions to custody;
- Respondents felt that the public in general do not understand conditional sentences
- Most judges acknowledged that before imposing a conditional sentence, they considered the possible impact on public opinion.

Usage of Conditional Sentences (1996-1999)

As part of a special data-collection exercise, conditional sentencing statistics were compiled over the first three years of the new sanction.

- Over the first three years of the conditional sentencing regime, 42,941 conditional sentences were imposed;
- Ontario and Quebec together accounted for 55% of all conditional sentences imposed;
- Property offences accounted for the highest percentage of orders (39%); 31% of orders were imposed for crimes against the person, 8% for offences against the administration of justice, and 11% for violations of the Controlled Drug and Substance Act (CDSA).
- Few cases involving a serious crime of violence resulted in the imposition of a conditional sentence;
- One quarter of all orders were for a period of up to three months. The next most frequent category was the 3 to 6 months, accounting for 18% of orders.
- Domestic violence offences and sexual assault offences were associated with the longest conditional sentence orders.
- Treatment orders and community service orders were the most-frequently-imposed optional conditions.

Public Opinion and Conditional Sentencing

Two representative surveys have to date explored public views of conditional sentencing. One was conducted in Ontario in 1997, the other across Canada in 1999. The findings include the following:

- Most Canadians are confused about the definition of a conditional sentence; when given a multiple choice question, more respondents were wrong than right;
- Public support for conditional sentencing is higher for assault than for sexual assault. The Ontario survey found that 71% of the public favoured the imposition of a conditional sentence in a case of assault. Support for the conditional sentence dropped to 40% for a case of sexual assault.
- Public support for conditional sentencing was significantly higher when the conditional sentence included a number of optional conditions. This was demonstrated by comparing the responses of two groups of respondents. One group were given a choice between imposing a six-month prison term or a six month conditional sentence with conditions. The second group were given the same choice, but the optional conditions were specified. The offender would have to observe a curfew, pay restitution to the victim, perform

community service and report to authorities twice a week. Without the conditions specified, only 25% of respondents favoured the imposition of a conditional sentence in a case of break and enter. When the optional conditions were specified, support for imposing a conditional sentence rose to 65%.

1.0 ORIGINS AND STATUTORY FRAMEWORK OF CONDITIONAL SENTENCING

The conditional sentence of imprisonment entered the *Criminal Code* on September 6, 1996. It was one of the central elements of the federal government's sentencing reform Bill (C-41). That Bill was the response to two reports that examined the sentencing process in some detail. One was the Report of the Canadian Sentencing Commission (published in 1987). The Sentencing Commission was a royal Commission of Inquiry with a mandate to explore the sentencing and parole systems and to make reform recommendations. The Commission identified a number of problems in the sentencing process, including an overuse of imprisonment as a sanction. Although the Sentencing Commission did not propose a conditional sentence, an earlier sentencing reform Bill (C-19) that died on the order paper had proposed a somewhat similar sanction.

The second major report to which Bill C-41 was a response was that of the House of Commons Standing Committee on Justice and Solicitor General (as it then was). Headed by David Daubney, M.P., the Committee toured the country holding public hearings and visiting correctional institutions. In 1988, it published its report, which contained approximately 100 reform recommendations. The Daubney Committee aligned itself with the Sentencing Commission when it identified the over-use of imprisonment as one of the sentencing problems in need of a response. The federal government studied these reports and conducted extensive consultations with provincial and territorial governments. The outcome was the sentencing reform Bill that was eventually proclaimed by Parliament on September 3, 1996.

The Sentencing Reform Bill introduced a number of important changes to the sentencing process in Canada.[1] Perhaps the most important innovation was the creation of a statement of the purpose and principles of sentencing. This statement is now found in Section 718 of the *Criminal Code* of Canada. The creation of the conditional term of imprisonment was another major change that has subsequently altered the landscape of sentencing.

The goal of the conditional sentence was to reduce the number of sentences of imprisonment in a safe and principled way. As will be seen, several conditions must be fulfilled before an offender sentenced to prison may be allowed to serve his sentence in the community under supervision.

According to Section 742.1:

Imposing of conditional sentence *- Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court*

(a) imposes a sentence of imprisonment of less than two years, and

(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2

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[1] For a description of the other elements of the Bill, see Daubney and Parry (1999).

the court may, for the purposes of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

As can be seen, if an offender has been convicted of the small number of offences that carry a minimum term of imprisonment, a conditional sentence is not a possible sanction. This exclusion reflects a desire on the part of Parliament to ensure consistency with previous *Criminal Code* amendments.

The first prerequisite condition is designed to serve two functions. First, the court must have decided to impose a prison term. Without this requirement, there is the danger that the courts would use the new sentence as a replacement for sentences of probation. This would result in the phenomenon identified by criminologists as "widening of the net". By this, they mean that a disposition designed to reduce the number of admissions to custody, ends up attracting more, not fewer people into prison. This "widening of the net" has occurred in other countries and there have been warnings about the possibility of it occurring in Canada with respect to the new conditional sentence (see Gemmell, 1997).

The second purpose of requiring the court to first have imposed a term of custody under two years is that the rule serves as a seriousness threshold. The most serious crimes, which would normally result in a term of custody of two years or more, are thereby excluded from consideration for a community-based sentence of imprisonment.

The second requirement (section 742.1(b)) also has two elements. First, it requires the court to be satisfied that the offender does not pose a risk to the community. Second, regardless of the probability of re-offending, if the imposition of a conditional sentence is not consistent with the statutory purpose and principles of sentencing, the offender should be imprisoned in a correctional facility. Finally, it should be noted that even if all the statutory prerequisites are fulfilled, the court still has the discretion to order the offender to serve the term of imprisonment in a correctional facility rather than at home under supervision.

Conditions of a Conditional Sentence Order

An offender ordered to serve a sentence of imprisonment in the community must abide by a number of compulsory conditions described in section 742.3 (1):

The court shall prescribe, as conditions of a conditional sentence order, that the offender do all of the following:

- *(a) keep the peace and be of good behaviour;*
- *(b) appear before the court when required to do so by the court;*
- *(c) report to a supervisor*
  - *(i) within two working days, or such longer period as the court directs, after the making of the conditional sentence order, and*
  - *(ii) thereafter, when required by the supervisor and in the manner directed by the supervisor;*
- *(d) remain within the jurisdiction of the court unless written permission to go*

outside that jurisdiction is obtained from the court or the supervisor; and

(e) notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.

In addition to the compulsory conditions to which all offenders serving a conditional sentence are subject, the Code provides the court with the discretion to impose a number of optional conditions as well.

742.3(2) Optional conditions of conditional sentence order *– The court may prescribe, as additional conditions of a conditional sentence order, that the offender do one or more of the following:*

(a) abstain from

(i) the consumption of alcohol or other intoxicating substances, or

(ii) the consumption of drugs except in accordance with a medical prescription;

(b) abstain from owning, possessing or carrying a weapon;

(c) provide for the support or care of dependants;

(d) perform up to 240 hours of community service over a period not exceeding eighteen months;

(e) attend a treatment program approved by the province; and

(f) comply with such other reasonable conditions as the court considers desirable, subject to any regulations, made under subsection 738(2), for securing the good conduct of the offender and for preventing a repetition by the offender of the same offence or the commission of other offences.

The provision makes it clear that the optional conditions imposed by the court should be aimed at preventing recidivism by the offender. This underlying purpose differs from the purpose of the optional conditions attached to a probation order. According to section 732.1(3)(h), the optional conditions of a probation order are imposed for the purpose of "protecting society and for facilitating the offender's successful reintegration into the community."

2.0 JUDICIAL ATTITUDES TO CONDITIONAL SENTENCING

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Introduction

The purpose of this survey was to explore the views and experience of trial court judges with respect to the conditional sentence of imprisonment. There are two ways of understanding judicial reaction to the new sanction. One is through an analysis of case law, and the other is through a systematic survey of trial court judges. The weakness with the case law approach is three-fold. First, only a very small percentage of sentences imposed will be captured by the reporting services. By the time that this survey of judges was completed, approximately 20,000 conditional sentences had been imposed across the country. Second, those sentences that are reported may well be unrepresentative of the majority of conditional sentences imposed.

The remaining weakness with an analysis of reported decisions is that the underlying judicial reasoning has to be inferred, as the judgement is not usually comprehensive enough to explain all the reasons giving rise to the sanction. Trial judges rarely have the time to write judgements that explain all the relevant factors considered at the time of sentencing. A survey has the advantage of containing direct questions relating to the use of the conditional sentence. This chapter then, should be read with a view to supplementing legal analysis based upon reported decisions.

One last issue is worth addressing. Judicial reasoning with respect to section 742 is not static; it is evolving continually, in response to judgements from the provincial Courts of Appeal, emerging socio-legal scholarship, experience with the sanction itself, and, perhaps, public opinion. Judges' use of conditional sentences of imprisonment will also likely be affected by offenders' behaviour: if the breach rate of orders remains low, and public reaction is not overwhelmingly negative, then we are likely to see continued growth in the use of the sanction. Lastly, the findings reported here derive from the period prior to the Supreme Court's guideline judgements with respect to conditional sentencing (*R. v. Proulx*; *R. v. Wells*).

Methodology

A questionnaire was developed and pre-tested with a sample of 13 judges in Toronto and Ottawa. Once the questionnaire was ready, it was distributed across the country to all adult criminal trial judges, through their respective Chief Judges and Chief Justices. Responses were anonymous, although some judges included letters with additional commentary on the issues raised. Distribution began in May 1998 and was completed by September 1998. Response rates are critical to any survey. Attempts were made to ensure the largest number of responses. By the time that the data-collection phase had been completed, responses had been obtained from 461 judges, which represents 36% of the total population. This is a respectable response rate for a busy professional sample, and compares favourably with other criminal justice surveys. The last systematic survey of sentencing judges across Canada was conducted in 1986, and generated a response rate of 32% (see Research Staff of the Canadian Sentencing Commission, 1988).

Results

Table 2.1 provides a breakdown of the province or territory in which the respondent served. As can be seen, over half the responses came from three provinces, Ontario (30% of total); Quebec (16%) and Alberta (12%).

Table 2.1: Province/Territory of Respondent

Province/Territory	Number	% of Total
Ontario	134	30
Quebec	69	16
Alberta	51	12
British Columbia	50	11
Manitoba	33	7
Saskatchewan	25	6
New Brunswick	21	5
Nova Scotia	20	5
Newfoundland	16	4
Yukon	5	1
PEI	4	1
NWT	3	1
No response**	14	3
Total	445	100

** refers to no identification of jurisdiction on questionnaire

Note: in this and all subsequent tables, percentages have been rounded, with the result that some totals may exceed 100%.

2.1 Use of Conditional Sentences to Date

Since the survey was conducted less than two years after the inception of the new sanction, it is perhaps not surprising that almost half the sample (45%) had imposed fewer than 10 conditional sentences. One-fifth (21%) had imposed between 11 and 20 conditional sentences, and one quarter had imposed more than 20. A small number of respondents (50 or 7%) had imposed more than 50 orders. Only 6% of the sample had not imposed a conditional sentence to date (Table 2).

Considerable regional variation in volume of orders

There was considerable variation across the country in the use of conditional sentences. In Alberta for example, only 30% of respondents had imposed 11 or more orders, while in neighbouring Saskatchewan, 61% of respondents reported having imposed 11 or more. Comparisons between Ontario and Quebec make a similar point: in Quebec, almost three-quarters of respondents were "high users" of conditional sentences (11 or more) compared to only a third of Ontario judges. The complete breakdown of usage by province/ territory can be seen in Table 2.2.

Table 2.2: Number of Conditional Sentences Imposed by Province of Respondent

	Number of conditional sentences imposed:				
Province or territory:	**None**	**1-10**	**11-20**	**21 or more**	**Total**
NF	6%	44%	13%	38%	100%
PEI	--	75%	25%	--	100%
NS	--	55%	30%	15%	100%
NB	5%	24%	33%	38%	100%
QC	9%	20%	25%	47%	100%
ON	7%	55%	15%	22%	100%
MN	16%	56%	16%	13%	100%
SK	3%	36%	29%	32%	100%
AB	6%	64%	19%	11%	100%
BC	--	64%	21%	15%	100%
YK	--	20%	60%	20%	100%
NWT	--	100%	--	--	100%
Total	6%	48%	21%	25%	100%

2.2 Objective of the Conditional Sentence of Imprisonment

Reducing the use of imprisonment was seen as the most important objective of conditional sentences

In response to an open-ended question, over half the judges identified reducing imprisonment or providing a cost-effective alternative to prison as their understanding of the single most important objective of the new sanction. Promoting the rehabilitation of the offender was identified as the most important objective by a further quarter of the sample. Slightly more than one judge in ten viewed conditional sentencing as an intermediate sanction. Section 742 expressly identifies the conditional sentence as a replacement for a prison term, (and not a disposition falling between probation and prison). However, these judges appear to have adopted a somewhat different interpretation of the provision, viewing a conditional sentence as both an alternative sanction and an intermediate sanction. (Table 2.3).

Table 2.3: Most Important Objective of Conditional Sentence

What do you consider to be the single most important objective of conditional sentences?	
Response	Percent of judges giving this response
Reduce imprisonment	32%
Provide a more cost effective alternative than prison	24%

Provide another intermediate sanction	11%
Respond to the offender: rehabilitation, reintegration, employment, etc.	27%
Other	6%
Total	100%

Note: We are reporting only the first objective mentioned; some judges mentioned more than one.

2.3 Most appropriate offences for consideration of a conditional sentence

Property crimes seen as the offences for which a conditional sentence is most appropriate

Judges were asked whether they could identify any offences for which a conditional sentence was particularly appropriate. The results are summarized in Table 2.4. Of the total sample of 444 judges, 423 responded to this question, and of these, approximately two-thirds (65%) cited one or more property offences. One quarter chose the option that there are no offences for which the new disposition is particularly appropriate. Eight percent of respondents said that they would consider imposing a conditional sentence for a crime of violence; in these cases they had in mind only the less serious incidents. Section 742 does not identify any particular offence or offence category. However, responses to this question may suggest that judges interpret the question of risk to the community as one which turns largely on the nature of the offence. Property offenders are generally perceived as being less of a threat to the safety of the community, which makes them particularly appropriate for a conditional sentence of imprisonment.

Table 2.4: Most Appropriate Offence for Conditional Sentence

Is there any kind of offence that you believe is particularly suited to a conditional sentence? (Note: We have coded "violent" and "property" offences independently; hence a judge could have mentioned both.	
Response	Percent of judges giving this response
There are no particular offences that are especially suited for a conditional sentence	26%
One or more violent offences (mostly "minor") was listed	8%
One or more property offences was listed	57%

2.4 Effectiveness of Conditional Sentence

Conditional sentence seen as effective as imprisonment in achieving rehabilitation but not deterrence or denunciation

An important question emerging from the appellate case law to date is whether the conditional sentence can be as effective in achieving the goals of sentencing as the term of imprisonment that it replaces. Several provincial courts of appeal have asserted that this can be the case in an appropriate fact situation. (e.g., *R. v. BiancoFiore*). Trial judges were asked whether a conditional sentence can be as effective as imprisonment in achieving: proportionality, denunciation, deterrence, rehabilitation and reparation. As Table 2.5 indicates, respondents clearly felt that the conditional sentence is more effective in achieving some goals than others. Almost three-quarters (72%) of the sample believed that the conditional sentence was "always" or "usually" as effective as imprisonment in achieving rehabilitation. However only approximately one-third believed that this was true for deterrence, or denunciation. A quarter of the judges surveyed were of the opinion that a conditional term of imprisonment was never, or almost never as effective as conventional imprisonment in achieving deterrence (Table 2.5).

Table 2.5: Effectiveness of Conditional Sentence

	Can a conditional sentence be as effective as imprisonment in achieving...				
Judge responded it can be as effective...	Proportionality	Denunciation	Deterrence	Rehabilitation	Reparation
Always/ Usually	51%	35%	35%	72%	59%
Sometimes	34%	33%	41%	24%	31%
Almost Never/Never	15%	32%	24%	4%	10%
Total	100%	100%	100%	100%	100%

Judges with more experience with conditional sentencing tend to have more positive views of the new sanction

We also explored the perceptions of judges as a function of their experience with conditional sentences. The sample was classified into three groups: those who had not imposed any conditional sentences to date, those who had imposed a few (operationally defined as between one and 10) and those who had imposed at least 11 such sentences. The first of these analyses reveal that judges who have imposed a significant number of conditional terms of imprisonment (11 or more) are more optimistic about the ability of the sanction to achieve proportionality, denunciation or deterrence.

2.5 Impact of a Conditional Sentence

One third of judges see a conditional sentence as having same impact as a probation order with the same conditions

Respondents were asked whether they thought that a conditional sentence had a different

impact on an offender than a probation order *with the same conditions*. In order to be effective, and to serve as a true replacement for imprisonment, a conditional sentence order should be truly distinct from a probation order. However, a third of the judges believed that a conditional sentence order did not have a different impact. Only one judge in five stated that a conditional sentence definitely had a different impact on the offender (see Table 2.6). This result may explain why some judges are sceptical about the ability of the conditional sentence to achieve some of the goals of sentencing: in terms of its "penal value" or impact on the offender, the conditional sentence is too close to a term of probation. Not surprisingly, perhaps, judges who had imposed more conditional sentences were more likely to subscribe to the view that conditional sentences had a different impact on an offender.

Table 2.6: Relative Impact of Conditional Sentence

Do you think that a conditional sentence has a different impact on an offender than a probation order with the same conditions?	
Response	Percent of judges giving this response
Definitely yes	21%
Probably yes	39%
Probably not	27%
Definitely not	7%
I don't know	7%
Total	100%

2.6 Guidance from Courts of Appeal

Most judges wanted more guidance from their Courts of Appeal

Since the introduction of the new disposition in 1996, all provincial Courts of Appeal have rendered judgements about the appropriateness of conditional sentences. Judges were asked whether they thought that they were receiving adequate guidance from their respective Courts of Appeal. Generally speaking, respondents seemed to feel that more guidance was required: only 4% felt that adequate guidance was available for "all cases"; a further 32% felt that guidance was available in most cases. The percentage of judges stating that they never received adequate guidance was three times higher than the percentage that responded that they always received adequate guidance (see Table 2.7).

Table 2.7: Adequacy of Guidance from Courts of Appeal

Do you believe you receive adequate advice from the Courts of Appeal on the use of conditional sentences?	
Response	Percent of judges giving this response
Yes, in all cases	4%
Yes, in most cases	32%
Yes, in some cases	26%

Yes, in few cases	27%
No, never	11%
Total	100%

Responses with respect to the Courts of Appeal would appear to be most positive in Newfoundland (where 50% stated that they received adequate guidance in all or most cases), and least positive in Ontario, where only approximately one-quarter of judges held this view (see Table 2.8).

Table 2.8 : Adequacy of Guidance from Courts of Appeal by Province of Respondent

	Received adequate guidance			
Province or territory:	All or most cases	Some cases	Few or no cases	Total
NF	50%	25%	25%	100% (16)
PEI	25%	25%	50%	100% (4)
NS	47%	12%	41%	100% (17)
NB	38%	33%	29%	100% (21)
QC	45%	25%	30%	100% (67)
ON	27%	26%	48%	100% (128)
MN	44%	34%	22%	100% (32)
SK	33%	33%	33%	100% (30)
AB	44%	14%	42%	100% (50)
BC	31%	31%	39%	100% (49)
YK	25%	50%	25%	100% (4)
NWT	67%	33%	--	100% (3)

Note: Percents in italics are based on a very small sample size.

Two qualifications should be borne in mind when considering these trends. First, we have no comparative data. That is, we cannot explore judges' perceptions about the extent of guidance that they receive from Courts of Appeal with respect to other sentencing or trial issues. As well, this survey was conducted in mid-1998. Since then, additional appellate judgements have been handed down, and trial court judges' perceptions of the extent of appellate guidance may have changed. Finally, the reader is reminded that these responses reflect judicial reaction prior to the Supreme Court's response to six conditional sentence appeals.

2.7 Community/ Supervisory Resource Issues

Community resources, particularly adequate supervisory resources, are an important issue for judges considering the imposition of a conditional sentence. Several questions on the survey addressed this issue. Judges seemed somewhat divided on whether they were able to find out what community resources were available: 43% responded that they were able to find out about resources all or most of the time, while 31% stated that they rarely or never were able to find out about such resources (Table 2.9).

Table 2.9: Availability of Resources

If you are considering a conditional sentence, are you able to find out what community resources are available and which might be appropriate for the case before you?	
Response	Percent of judges giving this response
Yes, all the time	9%
Yes, most of the time	34%
Yes, some of the time	26%
Rarely	28%
No, never	2%
Total	100%

Judges would impose more conditional sentences if there were more support resources

The importance of the issue of community and supervisory resources can be seen by the next Table (2.10), which shows that fully four out of five judges state that they would be more inclined to impose conditional terms of imprisonment if they could be assured that more resources were available. Judges with experience imposing conditional sentences were marginally more likely to state that they would impose conditional sentence orders more frequently if there were more community resources available.

Table 2.10: Attitudes Toward Conditional Sentences as a Function of Community Resources

Would you be inclined to use conditional sentences more frequently if there were more community and supervisory resources?	
Response	Percent of judges giving this response
Yes	80%
No	20%
Total	100%

Table 2.11: Number of Available Treatment Programs

Is the number of available treatment and other programs in your area adequate to support the use of conditional sentences?	
Response	Percent of judges giving this response
Yes, for all cases	3%
Yes, for most cases	27%
Yes, for some cases	32%
Rarely	31%
No, never	7%
Total	100%

A final question about support programs dealt with the need for additional treatment programs. Specifically, judges were asked to identify needs in light of what already existed

in the area. Of the total sample, 281 responded to this question. The most frequently-identified need was for more counselling programs, cited by three-quarters of this group. After counselling, anger management (65%) and alcohol or drug treatment programs were identified as necessary additions .

2.8 Nature of Conditions Imposed

The number and nature of optional conditions imposed as part of a conditional sentence order are critical to the success of the new sanction. It is only through the careful, and creative tailoring of the optional conditions that the sanction can be distinguished from a probation order and made responsive to the needs of the particular offender. National data on the use of different optional conditions are not yet available. For this reason, the responses to a question about the frequency of imposition of different conditions are particularly revealing.

Treatment and no-contact orders most frequently-imposed conditions

Table 2.12 shows the optional conditions most often imposed. Treatment and no contact orders are the most frequently-cited; 88% of the sample stated that they often imposed treatment, and 85% stated that they often imposed no contact orders. Curfews and order to abstain from alcohol or drugs were also frequently imposed by this sample of judges. House arrest with electronic monitoring was rarely used: 78% said that they never imposed this condition, 14% "seldom" and 8% "often". House arrest without electronic monitoring was somewhat more popular: 35% stated that they often imposed this condition, 28% "seldom" and 37% "never".

Table 2.12: Usage of Optional Conditions

	How often do you impose each of the following optional conditions? (Q12)			
Condition:	Often	Seldom	Never	Total
Alcohol/drug treatment	88%	12%	1%	100%
Other treatment	69%	28%	4%	100%
Restitution	62%	33%	5%	100%
Community service work	77%	18%	4%	100%
Curfew	71%	26%	3%	100%
No contact	85%	13%	1%	100%
House arrest with electronic monitoring	8%	14%	78%*	100%

House arrest without electronic monitoring	35%	28%	37%	100%
Abstain from alcohol	74%	22%	5%	100%
Abstain from drugs	79%	19%	3%	100%
Abstain from carrying a weapon	71%	23%	6%	100%

*includes those who indicated that electronic monitoring is not available

2.9 Consequences of Violating Conditional Sentence Orders

A critical issue in the conditional sentence literature involves the consequences of breaching an order. Where a breach of conditions is formally alleged, the sentenced person may be immediately returned to custody; in some circumstances, service of the original conditional sentence order is suspended, and is only resumed when the prisoner is re-arrested. According to section 742, the court has several options in the event that a breach is proven: (a) the offender can be committed to custody to serve the balance of the term in prison; (b) the optional conditions may be altered, or (c) the court may choose to let the order continue without modification.

It is somewhat surprising that over 40% of the judges responded "don't know" when asked to estimate the proportion of cases in which the conditions of the conditional sentence order have been followed without violation. This may suggest that judges believed that a significant number of orders that had been imposed were still running at the time that the survey was conducted, or it may suggest the absence of much communication between the sentencing judge and the probation personnel who administer the orders. A similar percentage (41%) responded that conditions imposed had been followed without violation in all or most of the cases (see Table 2.13).

Table 2.13: Experience with Violation of Conditions

Considering the conditional sentences that you have imposed, in what proportion of the cases have the conditions been followed without violation?	
Response	Percent of judges giving this response
In all of the cases	9%
In most of the cases	32%
In some of the cases	10%
In few of the cases	7%
In none of the cases	1%
Don't know	41%

Total	100%

Judges with experience with breach hearings report few problems

If a breach of conditions is alleged, section 742 sets out a procedure by which the allegation can be heard in court. Judges were asked what proportion of offenders would have been brought back to court in the event that there "might have been a substantial violation of conditions". A large percentage (just under half, 49%) responded "don't know". Of those who did offer a response, most were inclined to the view that the offender alleged to have violated his or her conditions had been brought back to court. Nevertheless, it is worthy of further research that half the judges were unaware of whether substantial allegations had been returned to court (see Table 2.14).

Table 2.14: Percentage of Cases Returned to Court

Of those cases where there might have been a substantial violation of terms of conditions, what proportion have been brought back to court?	
Response	Percent of judges giving this response
All of the cases	14%
Most of the cases	15%
Some of the cases	7%
Few of the cases	9%
None of the cases	7%
I don't know	49%
Total	100%

Most judges believe that incarceration is the appropriate response to a breach of conditions

Judges were asked whether they thought that an offender who breaches a conditional sentence order should be automatically sent to prison to serve the balance of the sentence. As Table 2.15 shows, the most frequent response option was "in most cases". A further 16% chose "in all cases". These trends suggest that judges believe the usual judicial reaction to breach should involve the incarceration of the offender. Nevertheless they strongly favour preserving sufficient judicial discretion to choose, in exceptional circumstances, some other route which does not invoke the incarceration of the offender for the balance of the original sentence.

Table 2.15: Judicial Response to Breach

Do you think an offender who breaches a conditional sentence should be automatically sent to prison to serve the balance of the sentence?	
Response	Percent of judges giving this response
Yes, in all cases	16%
Yes, in most cases	45%
Yes, in some cases	22%

Yes, in a few cases	4%
No	14%
Total	100%

2.10 Effects of the Conditional Sentence on Provincial admissions to custody

As noted, the specific goal of section 742 was to reduce, in a principled way, the number of provincial[2] admissions to custody across the country. It is probably too early in the new sentencing regime to come to definitive conclusions about the effect of section 742[3]. Nevertheless, judges were asked a series of questions about their perceptions of the effects of the conditional sentence.

Most judges believe that the conditional sentence has reduced the number of admissions to custody

Fully three-quarters of the sample were of the view that conditional sentences have reduced the number of admissions to custody in their respective courts. Twelve percent felt that there had been no reduction as a result of the introduction of the new sentence, and 12% had no opinion. It is clear then, that substantial numbers of sentencing judges believe that the new sanction has been successful in achieving its principal goal (see Table 2.16).

Table 2.16: Effectiveness of Conditional Sentencing in reducing incarceration rates

In your opinion, have conditional sentences reduced the number of offenders sent to custody in your court?	
Response	Percent of judges giving this response
Definitely yes	39%
Probably yes	36%
Probably not	10%
Definitely not	3%
I don't know	12%
Total	100%

Considerable regional variation emerged with respect to this question. The percentage of judges who responded that conditional sentences had "definitely" reduced the number of offenders sent to custody ranged from a low of 3% in the NorthWest Territories to 50% in Ontario[4]. Over one-third of the respondents from the Prairie provinces held this view.

2.11 Public Perceptions of Conditional Sentences of Imprisonment

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[2] As noted, the conditional sentence applies only to terms of custody under two years in length.

[3] Preliminary analyses suggest that the provincial incarceration rates have not declined since the introduction of the new sanction; see Reed and Roberts, 1999.

[4] Fully 90% of the sample of Ontario judges responded that conditional sentences had "definitely" or "probably" reduced the number of admissions to custody.

Conditional sentences carry a clear danger of generating public criticism of the sentencing process. Members of the public can be impatient with the complexities of the sentencing process, and tend to be critical of an absence of truth in sentencing. The conditional term of imprisonment has been described as a paradox (e.g., Gemmell, 1996; Roberts, 1997) the nature of which may be hard for the public to grasp. Polls in this country have long shown that most people believe that sentences are too lenient. Unless the conditions are properly crafted, a conditional term of imprisonment runs the risk of appearing to be a lenient disposition, comparable in severity or impact on the offender to a term of probation.

The only studies relating to this issue are a survey of the Ontario public conducted in 1997 (see Marinos and Doob, 1999) and a national survey conducted in 1999 (Sanders and Roberts, in press). (Results from these surveys are discussed in a separate chapter in this report). Nothing is known about judicial reaction to the views of the community with respect to conditional sentencing. How do judges react to the issue of public perception and the conditional sentence? Several questions on the survey addressed this critical issue. Questions explored public knowledge of, and support for, conditional sentences, and judges were also asked whether they considered the impact on public opinion when sentencing an offender to a conditional sentence of imprisonment.

Judges feel that the public in general do not understand conditional sentences...

The first question asked respondents to state whether they thought that "the general public understands the nature of conditional sentences". As can be seen in Table 2.17, most judges (61%) thought that "only a few" members of the public understands conditional sentences. Only 3% of respondents chose the response that "most people" understood the nature of conditional sentences. Over three-quarters of the sample felt that few or no members of the public understood the new disposition. As one respondent noted on the survey: "*the public have not been fully informed about the conditional sentencing process, and in that regard they look upon it with some scepticism*". Judges in Ontario were more likely to be pessimistic about the likelihood of public understanding (83% said that few or no members of the public understood conditional sentence, compared to 67% in Quebec), otherwise there were few regional differences.

Table 2.17: Public Understanding of Conditional Sentences

Do you think the general public understands the nature of conditional sentences?	
Response	Percent of judges giving this response
Yes, most of the public	3%
Yes, some of the public	14%
Only a few of the public	61%
No, none of the public	17%
I don't know	5%
Total	100%

....but that the informed public is quite supportive.

A slightly different question probed the issue of whether members of the public would support conditional sentences if they were more aware of their nature. Respondents were asked: "*Do you feel that members of the general public who are aware of the nature of conditional sentences support their use?*" Here, judicial perceptions of public opinion were more positive. Even though the vast majority of judges who participated in the survey said that the public does not understand conditional sentences, slightly over half (54%) thought that most or some of those people who understood conditional sentences supported their use (see Table 2.18). One judge noted that: "*I have spoken to people about the process and I have always been satisfied that when properly explained they [the public] fully understand and see the merits in it*".

Table 2.18: Reaction of "Informed" Public

Do you feel the members of the general public who are aware of the nature of conditional sentences support their use	
Response	Percent of judges giving this response
Yes, all who are aware	1%
Yes, most who are aware	25%
Yes, some who are aware	29%
Only a few who are aware	24%
No, none who are aware	7%
I don't know	14%
Total	100%

Judicial opinion was divided on the question of whether the public can distinguish between conditional sentences and probation

It is clearly important for the sentencing system to distinguish conditional sentence orders from probation orders. There are obvious similarities between the two; both involve supervision in the community, both involve the imposition of compulsory and optional conditions, and there is considerable overlap with respect to the nature of the conditions that may imposed for the two sanctions. Nevertheless, Parliament intended the conditional sentence to be more severe than a term of probation. If the public perceive the conditional sentence of imprisonment to be no more severe than a term of probation, criticism of the sentencing process will likely grow. For this reason, we asked judges whether the general public can be made to understand the difference between a conditional sentence and a probation order.

The sample was fairly evenly split in their responses. Over one-third (37%) responded that "only a few" or "no" members of the public could be made to understand the difference. However, a similar percentage believed that "all or most" members of the public could be made to understand the difference (Table 2.19). Once again the Ontario judges tended to have a more pessimistic view than their colleagues in other parts of the country: judges in Ontario were less likely to express the view that the public could be made to comprehend the distinction between a conditional sentence and a term of probation.

Table 2.19: Potential Effectiveness of Public Education

Do you think that the general public can be made to understand the difference between a conditional sentence and a probation order?	
Response	Percent of judges giving this response
Yes, all of the public	3%
Yes, most of the public	33%
Yes, some of the public	28%
Only a few of the public	30%
No, none of the public	7%
Total	100%

Clearly then, judges believe that the public need to be educated about the nature and function of conditional sentences. A policy recommendation emerging from this survey would therefore involve engaging the public and educating them with respect to the conditional term of imprisonment. There is some frustration among judges with respect to this issue; one respondent observed that "*in my jurisdiction, the Provincial Attorney General's Department has done nothing whatsoever to attempt to educate the public in this regard. The failure of our Provincial Governments to adequately explain to the public the process involved with a conditional sentence...does little to enhance public support.*"

Most judges consider the impact of a conditional sentence order on public opinion

Since judges were inclined to believe that most people do not understand the new disposition, it is not surprising, perhaps, that they considered the impact that a conditional sentence order might have on public opinion. As shown in Table 2.20, almost half the sample stated that they always or most of the time considered the impact that a conditional sentence would have. One-fifth of the sample stated that they never considered the impact of the sentence (see Table 2.20).

Table 2.20: Effect of Conditional Sentence on Public Opinion

Do you ever consider the impact that a conditional sentence order might have on public opinion?	
Response	Percent of judges giving this response
Yes, all of the time	18%
Yes, most of the time	27%
Yes, some of the time	34%
No, never	20%
Total	100%

3.0 USAGE OF CONDITIONAL SENTENCES 1996-1999

Introduction

Since the conditional sentence of imprisonment is a new sanction, provincial and territorial correctional data-bases have not yet fully automated data collection. For this reason, the Department of Justice Canada, in co-operation with the provincial and territorial correctional representatives, conducted a manual survey of conditional sentences imposed to date. By 2001, it is anticipated that conditional sentences will be integrated into the Adult Criminal Court Survey (ACCS) located in the Canadian Centre for Justice Statistics, a division of Statistics Canada. When this integration process is complete, information on conditional sentences will be available in the annual Centre publication entitled "Adult Criminal Court Statistics", which is part of the Juristat series.

It is important to point out that the trends presented in this chapter derive from the period prior to the Supreme Court judgement in *R. v. Proulx*. Since that judgement contained important guidance for trial judges, it is likely that the nature (and duration) of conditional sentence orders imposed will change significantly. The data summarized in this report serve as a comparison for trends in conditional sentencing in the post-*Proulx* period.

3.1 Volume of Conditional Sentences Imposed

September 1999 marked the three-year point in the new conditional sentencing regime. After three years of implementation, 42,941 conditional sentences of imprisonment had been imposed across the country.

Table 3.1 provides a breakdown of the conditional sentences imposed by province and territory over the three-year period. As can be seen, the highest numbers of conditional sentences were imposed in Quebec (12,690) and Ontario (11,443). Together, these two provinces accounted for fully 55% of all conditional sentence orders imposed (Table 3.1).

Table 3.1 Number of Conditional Sentence Orders by Province and Territories (1996-1999)

Province/Territory	# of Orders Imposed
Newfoundland	1,078
Nova Scotia	1,486
Prince Edward Island	101
New Brunswick	1,578
Quebec	12,690
Ontario	11,443
Manitoba	1,245
Saskatchewan	3,121

Alberta	3,414
British Columbia	6,334
Northwest Territories	146
Yukon	305
TOTAL	**42,941**

Over the last twelve-month period of this analysis (September 1 1998-August 31, 1999), the use of conditional sentences varied considerably. In the Northwest Territories, there was no change in the number of conditional sentences imposed. Elsewhere the increases ranged from 15% in Alberta to 31% in Manitoba. These trends may reflect reaction from the Courts of Appeal across the country. It is hard to tell on the basis of a single year, whether these differences represent longer term trends across the country. Once conditional sentences have been integrated into the Canadian Centre for Justice Statistics data-base, we shall be in a better position to evaluate the usage of conditional sentences.

3.2 Breakdown of Sentences across Offence Categories

Table 3.2 provides a breakdown of the percentage of conditional sentences imposed across a number of offence categories. This table reveals that the category of property crime accounts for the highest percentage of orders imposed (39%), followed by personal injury offences (31%). These two categories of offence together account for 70% of all orders imposed. Offences involving drugs accounted for 11% of cases while against the administration of justice accounted for a further 8%.

Table 3.2 Number and Category of Offences Receiving Conditional Sentences by Province and Territory (1996-1999)

	Offence Category					
Province/Territory	**% Person**	**% Property**	**% Driving**	**% Administration of Justice**	**% CDSA***	**% Other**
Newfoundland	27%	41%	2%	10%	11%	9%
Nova Scotia	28%	33%	6%	11%	14%	9%
Prince Edward Island	14%	65%	3%	5%	12%	1%
New Brunswick	35%	40%	3%	8%	8%	7%
Quebec	19%	41%	4%	1%	19%	17%
Ontario	32%	44%	3%	3%	11%	6%
Manitoba	39%	33%	3%	4%	21%	1%
Saskatchewan	39%	35%	8%	6%	4%	8%
Alberta	30%	51%	5%	5%	8%	2%
British Columbia	28%	37%	3%	6%	15%	11%
Northwest Territories	55%	22%	3%	12%	8%	0%
Yukon	31%	24%	6%	21%	3%	15%
AVERAGE CANADA	**31%**	**39%**	**4%**	**8%**	**11%**	**7%**

*Controlled Drug and Substance Act

Table 3.3 gives a somewhat more detailed breakdown for selected offences and offence categories and includes the numbers of conditional sentence orders imposed across the country. This table shows that the most serious crimes seldom resulted in the imposition of a conditional sentence. For example, there were only 24 cases of manslaughter out of over 40,000 conditional sentences imposed over a three-year period (see Table 3.3).

Table 3.3 Conditional Sentences Imposed by Province and Territory (1996-1999): Selected Offences and Offence Categories

	Number and Type of Offences											
Province/ Territory	**Man-slaughter**	**Person**	**Property**	**B&E**	**Fraud**	**Sexual Assault**	**Family Violence**	**Impaired Driving**	**Dangerous Driving**	**Administration of Justice**	**CDSA**	**Other**
Newfoundland		134	282	77	124	107	81	15	11	123	127	112
Nova Scotia		337	218	146	123	72		42	49	159	207	133
Prince Edward Island		23	94	22	40	4	6	3	4	12	29	2
New Brunswick	3	440	340	148	148	112		21	18	120	120	108
Quebec		2,363	4,996						428	89	2,317	2,116
Ontario	7	2,732	1,827	725	2,525	886		132	258	390	1,304	657
Manitoba	3	227	235	107	69	97	152	11	23	55	255	8
Saskatchewan		1,073	486	382	209	145		193	59	191	128	255
Alberta	3	1,010	1,730					179		166	260	66
British Columbia	8	1,368	1,412	475	429	421		109	58	382	957	715
Northwest Territories		84	25	9	7	17		6		22	14	
Yukon		86	34	11	28	9		19		63	9	46
TOTAL CANADA	**24**	**9,877**	**11,679**	**2,102**	**3,702**	**1,870**	**239**	**730**	**908**	**1,772**	**5,727**	**4,218**

3.3 Length of Conditional Sentence Orders

Table 3.4 provides a breakdown of the lengths of conditional sentences imposed, for Canada and also the provinces and territories. The average length of all conditional sentences was 8 months. Almost half the orders were for periods under six months. Fully 61% of the orders were for six months or less. Five percent were exactly 12 months while the remaining orders were longer than 12 months but less than two years. (The statutory limit for a conditional sentence order is two years less one day.) Over four hundred cases (446) were at the maximum of two years less a day.

Table 3.4 Length of Conditional Sentence (alone) by Province and Territory (1996-1999)

	Sentence Length in Months							
Province/Territory	**0 to 3**	**› 3 to ‹ 6**	**6**	**› 6 to ‹ 12**	**12**	**› 12 to ‹ 18**	**› 18 to ‹ 24**	**TOTAL**
Newfoundland	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
Nova Scotia	421	371	270	144	156	21	103	**1,486**
	28%	25%	18%	10%	11%	1%	7%	

Prince Edward Island	56	14	6	6	6	3	2	**93**
	60%	15%	7%	7%	7%	3%	2%	
New Brunswick	539	508	45	320	34	49	83	**1,578**
	34%	32%	3%	20%	2%	3%	5%	
Quebec	2,164	3,428		3,457		2,253	1,388	**12,690**
	17%	27%	0%	27%	0%	18%	11%	
Ontario	3,602	1,282	3,908	1,289	330	760	272	**11,443**
	32%	11%	34%	11%	3%	7%	2%	
Manitoba	261	151	291	163	175	48	155	**1,244**
	21%	12%	23%	13%	14%	4%	13%	
Saskatchewan	204	577	879	527	550	104	329	**3,170**
	6%	18%	28%	17%	17%	3%	11%	
Alberta	590	297	869	403	608	99	548	**3,414**
	17%	9%	26%	12%	18%	3%	16%	
British Columbia	2,322	838	1,283	1,255		404	232	**6,334**
	37%	13%	20%	20%	0%	6%	4%	
Northwest Territories	46	41	41	17	8	2	11	**166**
	28%	25%	25%	10%	5%	1%	7%	
Yukon	82	17	12	1	19		2	**133**
	62%	13%	9%	1%	14%	0%	2%	
TOTAL CANADA	**10,287**	**7,524**	**7,604**	**7,582**	**1,886**	**3,743**	**3,125**	**41,751**
	25%	**18%**	**18%**	**18%**	**5%**	**9%**	**6%**	**100%**

3.4 Length of conditional sentence orders by Offence Category

Not surprisingly, the length of the conditional sentence orders varied considerably across the different offence categories. Table 3.5 summarizes these data for Canada and the provinces/ territories, although data are unavailable for some jurisdictions. As can be seen, the longest average length was associated with the most serious offence: manslaughter (16.5 months). Within the different categories of offences, sexual offences and domestic violence offences attracted the longest conditional sentence orders, 10 months and 9 months respectively. Crimes against the administration of justice resulted in the shortest conditional sentence orders (an average of four months, see Table 3.5).

Table 3.5 Average Length of Conditional Sentence by Offence Type for Selected Jurisdictions, in months (1996-1999)

	Number and Type of Offences											
Province/ Territory	**Man-slaughter**	**Person**	**Property**	**B&E**	**Fraud**	**Sexual Assault**	**Family Violence**	**Impaired Driving**	**Dangerous Driving**	**Administration of Justice**	**CDSA**	**Other**

Nova Scotia		5.6	5.4	8.7	7.6	7.8		3.8	7.2	2.8	8.1	5.8
New Brunswick	17.0	5.0	5.0	7.0	7.0	8.0		6.0	5.0	4.0	7.0	5.0
Ontario	20.8	6.7	6.0	7.6	7.9	10.6		3.8	4.2	3.8	8.5	7.4
Manitoba	12.0	8.1	7.9	10.0	9.5	11.2		7.2	6.7	3.5	7.9	3.5
Saskatchewan		8.9	7.7	10.0	10.0	11.6	9.0	9.6	9.6	6.5	10.7	8.3
Alberta		9.9	9.1						9.6	6.4	10.1	6.0
British Columbia	16.3	5.8	5.5	8.8	7.5	10.6		3.5	6.1	4.8	6.6	6.3
Yukon		4.8	2.3	3.2	9.0	7.0		3.4		2.4	3.7	2.9
AVERAGE	**16.5**	**6.9**	**6.1**	**7.9**	**8.4**	**9.5**	**9.0**	**5.3**	**6.9**	**4.3**	**7.8**	**5.7**

The correlation between the seriousness of the crime and the duration of the conditional sentence order presumably reflects the influence of section 718.1. That provision of the *Criminal Code* articulates the fundamental principle of sentencing, namely that: "*A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.*" All sentences, including conditional sentences of imprisonment, are subject to this fundamental principle.

3.5 Nature of Optional Conditions

An important issue in the area of conditional sentencing concerns the number and nature of optional conditions imposed as part of a conditional sentence order. These data are only available from certain jurisdictions, and our conclusions with respect to the use of different conditions must therefore be tentative for the present. However, Table 3.6 provides some indication of the usage of conditions to date. As can be seen, alcohol and drug treatment programs are the most frequently-imposed optional conditions.[5]

Table 3.6 Optional Conditions Attached to Conditional Sentence Orders in Selected Provinces (1996-1999)

	Optional Conditions							
Province/ Territory	**Alcohol/ Drug Rehab.**	**Other Treatment**	**Restitution**	**Perform CSW**	**Curfew**	**No Contact**	**House Arrest**	**Other**
Newfoundland	187	201	43	144	208	169	244	264
	13%	14%	3%	10%	14%	12%	17%	18%
Prince Edward Island	49	31	8	7	5	11	38	11
	31%	19%	5%	4%	3%	7%	24%	7%

[5] According to section 742 . . . the court may order the offender to attend treatment. This element of the conditional sentence distinguishes it from a term of probation. According to section 732, a court may order an offender on probation to follow a program of treatment but only if the offenders gives his or her consent.

New Brunswick	849	155	247	300	158	202		190
	40%	7%	12%	14%	8%	10%	0%	9%
Manitoba	355	227	112	462	756	262	169	3,443
	6%	4%	2%	8%	13%	5%	3%	60%
Saskatchewan	1,043	131	220	371	225		134	
	49%	6%	10%	18%	11%	0%	6%	0%
Northwest Territories	74	46	20	74	15	26	7	89
	21%	13%	6%	21%	4%	7%	2%	25%

This table also shows considerable variability in terms of the optional conditions imposed in different jurisdictions. Alcohol or drug treatment was ordered in approximately half the conditional sentence orders imposed in the province of Saskatchewan However, interpretation must proceed with caution. These differences may reflect variation in case characteristics, rather than variable judicial attitudes to the use of optional conditions.

3.6 Outcome of Orders to Date

It is still too early to come to any firm conclusions about the outcome of orders to date, as many are still running and only some jurisdictions have reported this kind of information. Nevertheless, some preliminary data are available. Of 6,244 orders resulted in a breach for a rate of exactly one in three. Systematic information is not available on the grounds for the breach. However, the limited information available shows that over half (56%) of the orders involved a breach of the compulsory conditions. It is important to point out that these are very preliminary data, and cannot be taken as representative of all conditional sentence orders imposed to date.

3.7 Judicial Response to breach

The statistical portrait is also incomplete for the judicial response to a breach of conditions. The data that are available show that in 30% of cases the offender is incarcerated for the duration of the order and in an additional 19% of cases the offender is incarcerated for a term that is less than the remaining duration. In 22% of cases the court elected to modify the optional conditions imposed and in 28% of cases no recorded action was taken.

4.0 CONDITIONAL SENTENCING AND PUBLIC OPINION

Introduction

4.1 Why are the views of the Public Important?

There are several reasons for paying particular attention to the views of the public with respect to conditional sentencing. First, the success of any sanction depends, in part at least on the support of the general public. If members of the public are implacably opposed to a particular sanction or indeed a provision in the *Criminal Code*, confidence in the administration of justice will be undermined. There is a need therefore, to ensure a certain level of public support. Second, according to Section 718 of the Criminal Code, the fundamental purpose of sentencing is to: "contribute, along with crime prevention initiatives, to *respect for the law* and the maintenance of a just peaceful and safe society ". The nature of the conditional term of imprisonment (a prison term served in the community; see Gemmell, 1997) carries the danger of attracting public skepticism. The public may see the conditional sentence as evidence of leniency in sentencing, and the public already holds the view that sentences are too lenient[6]. Part of this view of sentencing severity is founded on a misperception of the true severity of the system.[7] In addition, inaccurate media coverage of conditional sentencing has represented the conditional sentence as a lenient disposition, one that is simply the equivalent of a term of probation.

Another reason for wanting to know more about public opinion in this area is that several appellate decisions as well as trial court judgements have cited the importance of considering the views of the public. Finally, the results of the survey of the judiciary summarized in Chapter 2 of this report revealed that a significant number of judges consider the views of the community before making a conditional sentence order.[8] This finding underlines the importance of understanding the nature of public reaction to the new sanction.

Assertions are frequently made about the nature of public opinion in the absence of systematic data. Fortunately, two representative surveys of the Canadian public have now been conducted on the issue of conditional sentencing. We are in a position therefore to draw some firm conclusions about the state of public knowledge and opinion with respect to the new sanction.

The two surveys took place two years apart. The first was conducted in the province of Ontario by researchers at the Centre of Criminology, University of Toronto. Marinos and Doob (1999) explored the perceptions of residents of Ontario with respect to the new

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[6] A national poll conducted in 1999 found that over two-thirds of the public believe that sentences are too lenient (see Sanders and Roberts, in press). The percentage expressing this opinion has not changed appreciably in 20 years (see Roberts and Stalans, 2000).

[7] For example, several surveys have shown that the public under-estimate the percentage of offenders sent to prison, and over-estimate the percentage of prisoners granted release on parole (see Roberts, 1994; Roberts, Nuffield and Hann, 1999).

[8] It is also likely that consideration of public views affects the nature of the conditional sentence order. Judges concerned with the possibility of a negative community reaction to the imposition of a conditional sentence may respond to this reaction by imposing more (and more punitive) conditions.

sanction. The second survey was conducted by the Angus Reid group and employed a national sample. This survey also included questions about public knowledge as well as attitude (see Sanders and Roberts, in press). Taken together, the results from the two surveys shed important new light on the views of the public with respect to conditional sentencing. We shall begin by reviewing the findings relating to public knowledge.

4.2 Public Knowledge of Conditional Sentencing

By the time that the Angus Reid survey was conducted, two years had elapsed under the conditional sentencing regime. Canadians had had considerable exposure to the new sanction. However, almost all the information provided about conditional sentencing had come through the news media. It would be reasonable to expect Canadians to be somewhat confused about the nature of a conditional sentence of imprisonment.

Respondents were given a forced choice alternative question. They were provided with three definitions, one that defined bail, a second parole, and the third a conditional sentence of imprisonment. Given the choice of definitions, more respondents were wrong than right. Just over four respondents in ten (43%) of the sample correctly identified conditional sentencing. Almost as many respondents chose the definition of parole, while 13% wrongly chose the bail definition (see Table 4.1).

Table 4.1: Public Knowledge of Conditional Sentencing (Canada, 1999)

Percentage of sample choosing definition of:	
Parole	38%
Bail	13%
Conditional sentence (correct response)	43%
Don't know	5%
Total	100%

Source: Sanders and Roberts (in press).

If the respondents were simply guessing, we would expect approximately one-third to be correct. Forty-three percent is not significantly higher than chance.[9] Accordingly it seems safe to conclude that Canadians are somewhat confused about the new sanction. *Public legal education with respect to the new sanction would appear to be a priority.*

Since the public is confused about the definition of conditional sentencing, it is perhaps not surprising that they see little difference between the new sanction and a term of probation. This result emerged from analysis of the Ontario survey conducted by Marinos and Doob. These researchers found that while the members of the public do distinguish between imprisonment and "intermediate" sanctions served in the community, people failed to make a distinction between a conditional sentence of imprisonment and a term of probation. This is an important finding. If the public perceive a conditional sentence to be no more severe than a term of probation, they are likely to react negatively when learning

[9] If one of the definitions had described probation, it is likely that the percentage giving the correct response would have been even lower.

that a conditional sentence was imposed on an offender convicted of a crime of violence. This in turn is likely to increase public criticism of the judiciary.[10]

4.3 Level of Public Support for Conditional Sentencing

It is likely that public support for conditional sentencing is going to vary according to the seriousness of the crime for which the conditional sentence is imposed. Absent exceptional circumstances, the public is unlikely to support the imposition of a conditional sentence in serious personal injury offences, or crimes of sexual aggression. One of the purposes of the two surveys was to provide some preliminary indication of the degree of public support for conditional sentencing.

In their study using a sample of Ontario residents, Marinos and Doob presented respondents with three brief descriptions of offences: break and enter, sexual assault and assault causing bodily harm.

Table 4.2 shows the level of public support for conditional sentencing in the three cases. As can be seen, support is highest for the assault and lowest for the sexual offence. Almost three-quarters of the sample favoured a conditional sentence over imprisonment for the assault case.[11] These results demonstrate that there is considerable support for conditional sentencing for some offences.

Table 4.2: Public Support for Conditional Sentencing (Ontario, 1997)

Offence:	Conventional Imprisonment	Conditional Imprisonment	Total
Break & Enter	56%	44%	100%
Sexual assault	60%	40%	100%
Assault causing bodily harm	29%	71%	100%

Source: Marinos and Doob (1999).

The national survey conducted in 1999 further explored levels of public support for conditional sentencing. On this occasion, six scenarios describing specific crimes were presented to respondents. Participants were then asked to make a choice between imposing a conditional sentence or a conventional sentence of imprisonment. It is important to note that in this survey and in the one conducted by Marinos and Doob, prior to making their decision between prison or a conditional sentence, all respondents had been given a definition of a conditional sentence. They therefore had a clear idea of what the new sanction entailed.

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[10] The 1999 Angus Reid poll found that 69% of the sample believed that sentences were too lenient. This finding is consistent with the results of surveys conducted over the past 15 years.

[11] The nature of the assault – as a result of a bar-room fight – probably explains the high degree of public support for this case. If the assault had consisted of an unprovoked attack., it is likely that the level of public support for conditional sentencing would have been lower.

The offences selected for the 1999 survey were brief summaries of actual cases, including some of the cases that were the subject of appeals to the Supreme Court in the Spring of 1999.

The offence descriptions were as follows:

1) After drinking heavily, the offender stole a car and drove at a high rate of speed through the city. He lost control of the car and crashed the vehicle. Two people were seriously injured. One person suffered permanent injuries that have had a devastating impact on her life.

2) The offender was convicted of fraud. He had defrauded his employer of over a quarter of a million dollars. The fraud contributed to the employer's company going out of business, with the loss of employment for many people.

3) A lawyer was convicted of stealing from his clients. His victims were in another country and the theft was only discovered through a routine check of their accounts.

4) A 23-year old man has been convicted of assault causing bodily harm. He hit and broke the nose of a man he had a disagreement with in a local bar.

5) A man has been convicted of assaulting his wife. She received medical treatment for minor injuries. The man has no previous criminal record.

6) A man was convicted of several sexual assaults against his 5-year old stepdaughter. The crimes were committed over a period of several years.

Table 4.3 shows the degree of public support for conditional sentencing with respect to the six scenarios. As can be seen, support for conditional sentencing was highest for the assault case, and very low for the offender convicted of sexual assault: only 3% of the sample favoured a conditional sentence in this scenario. It is important to note however that the offence described was a particularly serious instance of sexual assault involving a very young victim and repeated assaults over a protracted period of time, as well as a breach of trust. It is unclear whether the same degree of public opposition to the imposition of a conditional sentence would be found for a conviction for sexual assault occurring between adults and which involved a single incident.

Table 4.3: Public Support for Conditional Sentence (Canada, 1999)

Offence	% favouring conventional imprisonment	% favouring conditional imprisonment	Total
(1) Dangerous driving	75%	25%	100%
(2) Fraud over	71%	29%	100%
(3) Fraud with breach of trust	58%	42%	100%
(4) Assault causing bodily harm	23%	77%	100%
(5) Sexual assault	97%	3%	100%

(6) Assault (domestic)	38%	62%	100%

Source: Sanders and Roberts (in press)

There was substantial support for conditional sentencing in the case of domestic assault (62% choosing conditional sentence over imprisonment), and also the assault causing bodily harm (three-quarters of the sample choosing conditional sentence).

4.4 Replicating Findings

One of the goals (seldom realised) of social science research is the replication of results. This was achieved in the current context. The 1999 Angus Reid survey included a question that had been posed to respondents by Marinos and Doob two years earlier. This question involved a case of assault causing bodily harm. Respondents in both surveys were asked to choose between the imposition of a conditional sentence and a term of conventional imprisonment.

Table 4.4 shows the support for the conditional sentence option across the two surveys. As can be seen, there was consistent support for the conditional sentence, and the level of support was unchanged from one survey to another. Since the surveys were conducted at two different time periods and employed different samples of the public, this finding suggests that there is a bedrock of support for conditional sentencing among members of the public.

Table 4.4: Replicating Findings: Public Support for Conditional Sentencing in a case of Assault (1997 and 1999).

	% Sample Choosing Conventional Imprisonment	% Choosing conditional imprisonment	Total
Marinos and Doob (1999)	29%	71%	100%
Sanders and Roberts (in press)	23%	77%	100%

The results from these two surveys of the Canadian public, both of which used representative samples of the population, show that public support for conditional sentencing is quite variable, depending on the seriousness of the offence. The imposition of a conditional sentence of imprisonment for a serious crime of violence may provoke public criticism (particularly for crimes of sexual aggression). However, for the less serious offences, particularly non-violent crimes, there would appear to be considerable public support for the new sanction.

The next section identifies a second dimension (besides crime seriousness) which has an important impact on the views of the public: the number and nature of conditions attached to the conditional sentence order.

4.5 Public reaction to conditional sentencing depends on amount of information provided

One of the most well-documented findings in the public opinion literature is that people tend to be far less punitive when given an adequate amount of information. Several research studies illustrate the point.

Doob and Roberts (1988) randomly assigned groups of subjects to read either a summary of court documents relating to a sentencing hearing, or a newspaper account of the hearing. Both groups were then asked whether they found the sentence imposed to be too lenient, too harsh or about right. The researchers found that subjects assigned to read a summary of court documents were far less punitive than the respondents who had been given the newspaper summary of the sentencing hearing. This study demonstrates the importance of providing adequate information about the case.

Another common finding is that when people are asked a global question such as "*Are sentences too harsh, too lenient or about right?*" they tend to respond in a punitive fashion. Part of the reason for this is that people tend to have the "worst-case" scenario in mind: a recidivist offender convicted of a serious crime of violence. However, when given details about a specific case, respondents tend to be far more accepting of issues such as community-based sentencing or parole.

4.6 Contrast between public opinion surveys and public behaviour

Applications under section 745.6 of the Criminal Code (the so-called "faint hope" clause) provide a good illustration of the limitations of opinion polls. Results from the only poll dealing with the question of parole for life prisoners have shown that most Canadians appear to oppose the granting of full parole to prisoners serving life terms for murder. This cannot be the whole story however, since fully four out of five applications to date have resulted in a positive result for the application. That is, in 80% of cases, a prisoner serving life imprisonment for murder had his parole eligibility date brought forward by a jury reviewing his application according to section 745.6.

The explanation for the discrepancy between the results of the applications and the results of the opinion poll question would appear to lie in the amount of information available. Most Canadians may oppose parole for lifers when asked a general question, but change their minds when provided with a great deal of information about the specific prisoner making the application.

4.7 Application to the issue of conditional sentencing

These findings from previous research suggest that the public reaction to conditional sentencing may be influenced by the amount of information provided on the survey. A critical issue in the area of conditional sentencing relates to the optional conditions that

are imposed as part of a conditional sentence order. This has emerged from a number of appellate decisions, and also from the academic commentary on the new sanction. Many observers have suggested that is the number and nature of conditions imposed on the offender that make the new sanction acceptable to the public. A conditional sentence order with few optional conditions that have little impact on the offender's life may be perceived by the public as being no different than a term of probation. Such a conditional sentence order would probably be perceived as being too lenient, since it is supposed to replace a term of imprisonment.

In order to explore this issue, the survey tested a specific hypothesis, namely that public support for the imposition of a conditional sentence (over a conventional term of imprisonment) would increase significantly if the optional conditions were made salient. This hypothesis was tested in the following way. Respondents were given a brief description of a specific case. It involved a commercial break and enter committed by an offender with previous convictions for the same crime. A case of this kind would normally result in a term of imprisonment of between six months and one year. Respondents were given a clear and comprehensive definition of a conditional sentence of imprisonment and were the asked to choose between two sentences: six months in prison or a conditional sentence.

The sample was divided into three groups. For one third of respondents (Group A), no further elaboration of the conditional sentence was provided. People in Group B were informed about the specific conditions attached to the conditional sentence. Specifically, they were told the following:

If the offender receives the 6-month conditional sentence, he will have to remain home every night after 7.p.m. and on weekends. As well he will have to pay back the money that he stole, perform some work for the community and report to authorities twice a week for the next six months.

The final group (C) received this same description but the conditional sentence was twice the length of the term of imprisonment that was the other sentencing option provided.

The results showed that public acceptance of the conditional sentence was highly influenced by the presence of the information about conditions. Almost three-quarters (72%) of the respondents in Group A favoured incarcerating the offender. However, support for incarceration declined to only 35% *once the conditions of the order were made explicit.* Making the length of the conditional term of imprisonment twice as long as the alternative of conventional prison generated slightly more support for the conditional sentence option.

These results clearly show that it is not the serving of a prison term in the community to which the public object, but rather the absence of realistic conditions which have an impact upon the offender's lifestyle. The consequences for judges wishing to ensure public support for a conditional sentence are apparent: the public support conditional sentencing of the order carries meaningful conditions that have an impact on the offender.

4.8 Summary

The findings from these two representative polls of the Canadian public can be summarized in the following way. First, Canadians still do not have a clear idea of the nature of the new sanction. It is likely that some people confuse the conditional term of imprisonment with a sentence of probation or a period of supervision on parole. Second, public support for the conditional sentence varies considerably depending upon the nature and seriousness of the offence of which the offender has been convicted. Support seems lowest with respect to crimes of sexual aggression, particularly those involving children. On the other hand, there would appear to be widespread public support for conditional sentencing involving the less serious crimes, particularly property crimes. Finally, the number and nature of conditions attached to the conditional sentence would appear to be critical to public acceptability. Public support for conditional sentencing is much greater if a number of optional conditions are imposed, and their existence made clear. In this respect, the position taken by the Supreme Court in *R.v. Proulx* is clearly consistent with public opinion with respect to the new sanction.

5.0 CONCLUSIONS AND FUTURE RESEARCH DIRECTIONS

It would be unreasonable to expect any new sanction to be implemented expeditiously and without controversy. The conditional term of imprisonment is a complex disposition that requires careful consideration before being imposed. That said, it is not surprising that trial (and appellate) court judges across the country have taken some time to determine the way in which conditional sentencing may best contribute to the sentencing options traditionally available to the court. Simply put, the courts have taken some time "finding a place for conditional sentences" (Manson, 1997). Some issues are becoming clearer, as a result of three years experience with the new sanction and the Supreme Court's recent judgements in the conditional sentence appeals.

5.1 Conditions, Conditions, Conditions .....

This is the title of an article by Judge Renaud on the topic of conditional sentencing. It captures well the most important issue that has emerged in the area of conditional sentencing. As data described in this report have demonstrated, the nature of the conditions attached to a conditional sentence order are critical to ensuring the support of the community. But community acceptance is not the most important element of the optional conditions imposed.

As noted in section 742.3(2)(f), when imposing a conditional sentence should consider "reasonable conditions" for "securing the good conduct of the offender and for preventing a repetition by the offender of the same offence or the commission of other offences". In other words, the optional conditions should be selected to promote the goal of special deterrence.

5.2 Future Research Priorities

This research report contains some preliminary data regarding the use of the new sanction. Many questions remain to be answered. These await the incorporation of the conditional sentence into the annual Adult Criminal Court Survey (ACCS) conducted by the Canadian Centre for Justice Statistics, a division of Statistics Canada. The ACCS is the source of the annual publication on court trends which forms part of the Juristat series. Once that has been accomplished, we shall be in a much better position to understand trends in the use of the conditional sentence of imprisonment. The judgement of the Supreme Court in *Proulx* made it clear that conditions are critical to the conditional sentence for several reasons. First, and primarily, because it is through the use of punitive conditions that the court distinguishes a conditional sentence from a term of probation. As the Court noted: "Parliament intended imprisonment, in the form of incarceration, to be more punitive than probation, as it is far more restrictive of the offender's liberty. Since a conditional sentence is at least notionally, a sentence of imprisonment, it follows that it too should be interpreted as more punitive than probation." (*R. v. Proulx*, paragraph 29).

The Court proceeded to offer some practical advice as to how courts might make a conditional sentence more punitive than probation. It suggested that "conditional sentences should generally include punitive conditions that are restrictive of the offender's liberty. Conditions such as house arrest or strict curfews should be the norm, not the exception. As the Minister of Justice said during the second reading of Bill C-41 (House of Commons Debates) "this sanction is obviously aimed at offenders who would otherwise be in jail but who could be in the community under *tight* controls" (*R. v. Proulx*, paragraph 36).

There is some evidence from the case law that trial judges and appellate courts had been moving in the direction of imposing stricter conditions on offenders serving terms of imprisonment in the community. For example, one analysis noted that although the optional conditions attached to conditional sentences and terms of probation were fairly similar, for offenders convicted of crimes of violence, there were clear differences. Offenders serving conditional sentences for crimes of violence were subject to significantly more restrictions on their liberty than offenders sentenced to terms of probation for this same form of offending (Roberts, Antonowicz and Sanders, 2000).

What is needed, therefore, is an analysis of the optional conditions imposed upon offenders serving conditonal sentences in the community, to ensure that the guidelines laid down by the Supreme Court in *Proulx* are indeed being followed by judges at the trial court level.

A second important research question that emerges from the *Proulx* judgement concerns the nature of judicial response to breach. The statutory framework of the conditional sentence order permits the court to choose from a range of options in the event that a breach of conditions is proven. The court may vary the conditions attached to the order, commit the offender to custody for some portion of the time remaining (or the balance of time remaining on the order), or simply issue a warning to the offender and permit him to continue serving the conditional sentence as originally imposed. However, the Supreme Court made it clear in *Proulx* that "where an offender breaches a condition without reasonable excuse, there should be a presumption that the offender serve the remainder of his or her sentence in jail." (R. v. *Proulx*, paragraph 39). We know little about the nature of judicial response to breach to date. Accordingly, an important goal of future research should be to document the outcomes of breach hearings to date.

In order to fully understand this issue it will be necessary to conduct interviews with Crown counsel and probation officers, in order to know whether all allegations of breach hearings result in an actual hearing. It is possible that an allegation of breach that occurs late in the conditional sentence will not result in official action by the criminal justice system.

5.3 Effectiveness of Conditional Sentencing

The results to date with respect to the recidivism of offenders sentenced to conditional sentences are encouraging. Few offenders have accumulated fresh criminal charges

during the course of their period of supervision in the community. This appears true for all types of offenders, including those sentenced for crimes of violence. If the re-offending rates remain low, it is likely that judges will be encouraged to use the new sanction more widely. As well, as the general public becomes more aware of this reality, some of the opposition to conditional sentencing will disappear. If it transpires that the recidivism rate is no higher for offenders on conditional sentences (than offenders sentenced to serve their sentences in a correctional institution), the public may be even more supportive. This may be particularly true if the public is made aware that it costs much less to supervise an offender in the community than to imprison him or her in correctional institution.

Once baseline data have been established, special studies should be instituted to understand the effectiveness of different optional conditions. The link between the optional conditions and the sentencing objective of special deterrence is clear from the statutory framework of the sanction. An important research objective would consist of understanding how recidivism rates – the ultimate measure of whether special deterrence has worked -- are affected by the specific optional conditions, such as reporting frequency and court-ordered treatment.

Another goal of the research should be to identify which kinds of offenders are considered high risk in terms of re-offending. The risk to the community remains a central concern for the court that is considering the imposition of a conditional sentence order, yet we do not yet have systematic, national information about the breach rates of conditional sentence orders imposed to date.

5.4 Electronic Monitoring

Some jurisdictions (such as the United Kingdom) are now making extensive use of electronic monitoring of offenders. To date, this technology has not been widely used as a way of monitoring offenders sentenced to a conditional term of imprisonment. One reason for this is that the necessary resources are seldom available. The specific jurisdictions either do not have electronic monitoring as a program, or EM is reserved for prisoners released on some form of temporary absences from prison. If EM were more widely available, judges may well expand the ranger of offenders sentenced to a conditional sentence to include higher-risk cases.

5.5 "Net-widening"

The information available so far with respect to the impact of the conditional term of imprisonment on admissions to custody is incomplete. Nevertheless, it offers little to suggest that admissions to custody have declined (see Reed and Roberts, 1999).

Since the primary justification for introducing the conditional sentence was to reduce, in a safe and principled fashion, the number of persons sentenced to prison, this issue should clearly be the object of a research initiative. Several experts (e.g., Gemmell, 1997) have

warned about the possibility of "net-widening". If the number of admissions to prison has not declined as a result of the introduction of the new sanction, then net-widening must have taken place. That is, some of the offenders who have received a conditional sentence of imprisonment would, prior to 1996 have received a sentence other than imprisonment, presumably a term of probation. Researchers will need to take a careful look at the characteristics of persons sentenced to a conditional sentence, in order to establish whether "net widening" has occurred.

5.6 Judicial Attitudes

The survey of judicial officers reported in this report was conducted early in the new sentencing regime. Since the survey was conducted, several developments have taken place, including the decision of the Supreme Court in the six conditional sentence appeals. It would be interesting to conduct a second survey several years after the first, to follow the evolution of judicial attitudes with respect to the new sentence. The attitudes of judges are critical to the success of the new sanction. For this reason alone it is important to conduct systematic research into their experiences and perceptions. In addition, it is important to know more about the experiences and perceptions of other criminal justice actors, such as Crown and defence counsel. Probation officers constitute one of the most critical groups. They are responsible for administering the conditional sentence order, and ensuring that offenders comply with the court-ordered conditions. A useful research exercised would consist of a survey of the experiences and attitudes of these groups.

5.7 Conclusion

Whether a given penological innovation "works" is to a large extent an empirical question that can only be answered through the use of systematic research. The conditional sentence of imprisonment is no exception to this rule. The success of the new sanction will only be really known once a considerable amount of research has been conducted. This report is a modest first step towards that goal.

References

Campbell, M. (1999) Six to Watch. ***Canadian Criminal Law Review***, 4: 65-83.

Daubney, D. and Parry, G. (1999) An Overview of Bill C-41 (the Sentencing Reform Act). ***In: Making Sense of Sentencing***. Toronto: University of Toronto Press.

Doob, A.N. and Roberts, J.V. (1988) Public Punitiveness and public knowledge of the facts: Some Canadian Surveys. In: N. Walker and M. Hough (Eds.) ***Public Attitudes to Sentencing: Surveys from Five Countries***. Cambridge Studies in Criminology. Aldershot: Gower.

Gemmell, J. (1997) The New Conditional Sentencing Regime. ***Criminal Law Quarterly***, 39: 334-361.

Manson, A. (1997) Finding a Place for Conditional Sentences. ***Criminal Reports*** (5th), 10: 283-300.

Marinos, V. and Doob, A.N. (1999) Understanding Public Attitudes toward Conditional Sentences of Imprisonment. ***Criminal Reports***, 21: 31-41.

R. v. Biancofiore (1997), 29 M.V.R. (3d) 90, 35 O.R. (3d) 782, 119 C.C.C. (3d) 344, 103 O.A.C. 292, 10 C.R. (5th) 200 (Ont. C.A.)

R. v. Proulx (2000) S.C.C. ***Criminal Reports*** (5th), 30: 1-49.

R. v. Wells (17 February 2000) (S.C.C.)

Reed, M. and Roberts, J.V. (1999) Adult Correctional Services in Canada. ***Juristat***, 14(4).

Research Staff of the Canadian Sentencing Commission (1988) ***Views of Sentencing: A Survey of Judges in Canada***. Research Reports of the Canadian Sentencing Commission. Ottawa: Department of Justice, Canada.

Roberts, J. V. (1994) ***Public Knowledge of Crime and Justice***. Ottawa: Department of Justice Canada.

Roberts, J. V. (1997) Conditional Sentencing: Sword of Damocles or Pandora's Box? ***Canadian Criminal Law Review***, 2: 183-206.

Roberts, J.V., Antonowicz, D. H. and Sanders, T. (2000) Conditional Sentences of Imprisonment: An Empirical Analysis of Optional Conditions. ***Criminal Reports***, 30: 113-125.

Roberts, J.V. and Cole, D.P. (1999) ***Making Sense of Sentencing***. Toronto: University of Toronto Press.

Roberts, J.V., Nuffield, J. and Hann, R. (1999) ***Public Attitudes toward Parole***. Ottawa: University of Ottawa.

Roberts, J.V. and Stalans, L.S. (2000) ***Public Opinion, Crime and Criminal Justice***. Boulder, Colorado: Westview Press.

Sanders, T. and Roberts, J.V. (in press) Conditional Sentencing: Results of a National Survey of the Canadian Public. ***Canadian Journal of Behavioral Science***.